IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1145 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
DR.SURESHCHANDRA CHHOTALAL & 1 - Defendant(s)

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Appearance :
MR MD PANDYA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal(Main), Vadodara passed in M.A.C.P. No.535 of 1983 dated 28.11.1985.

2.0 The brief facts of the case are that on 30.01.1983 the present opponent No.1 along with his brother-in-law Arvindbhai Kantibhai were waiting for bus at Zavernagar bus stop to go to Bapod Jakatnaka Terminus. At that time a bus

driven by present opponent No.2 came and while trying to board the said bus opponent No.1 fell down on the ground and received serious bodily injuries. Therefore, he filed a petition claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellant has submitted that the Tribunal ought to have properly appreciated the principles of governing determination of liability for negligence. He has further submitted that the Tribunal has committed an error in not considering the fact the fact that the F.I.R. of the said accident was filed after a delay of about two months.

4.0 Heard learned Advocate for the appellant. Though, served none appears on behalf of the

opponents. The opponent No.2 vide his deposition Exh.29 has admitted that at the relevant time he was driving the said bus. However, he has not accepted the story put forward by the opponent No.1 and his brother-in-law that opponent No.1 got injured while trying to board the bus driven by him. On the contrary, he has stated that there was no such accident took place as is alleged by the opponent No.1 on the date in question. However, From the deposition of opponent No.1 and his brother-in-law Arvindbhai Kantibhai-witness produced at Exh.24 and Exh.26 respectively it clearly transpires that the opponent No.1 got injured while trying to board the bus driven by opponent No.2 and while rushing towards opponent No.1 his brother-in-law Arvindbhai Kantibhai took down the number of the said bus. Hence, once the evidence of the applicant and his brother-in-law Arvindbhai Kantibhai-witness is accepted, there is no escape from the conclusion that the accident had occurred as a direct result of sole negligence on the part of the opponent No.2 in driving the bus.

This is not because there is contravention of the evidence of the applicant and Arvindbhai-witness that the bus had been suddenly and abruptly started while the applicant was still in the process of boarding it. It is not in dispute that on account of the accident in question, opponent No.1 sustained a fracture of the left femur. The said fact is supported by evidence of Dr. K.K. Jogia, of the New Civil Hospital produced at Exh.22. I am, therefore, of the opinion that the Tribunal has rightly held that the opponent No.1 sustained injuries on account of the rash and negligent driving on the part of the opponent No.2 and hence opponent No.1 is entitled to the compensation awarded by the Tribunal.

4.1 As regards the contention of the learned Advocate for the appellant that there was delay in filing the F.I.R. is concerned, it is required to be noted that the opponent is resident of Surat and he was on a social visit in Vadodara

and pursuant to the accident in question he was taken to hospital at Bardoli on the same night and subsequently was taken to Surat where he drafted the F.I.R. and sent it to Baroda on account of which delay was caused, and hence, the said contention is rejected.

4.2 In above view of the matter, I am in complete agreement with the reasoning given and findings arrived at by the Tribunal, and therefore, find no reason to interfere in this appeal.

5.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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